Bower, F.

# The agricultural holdings (England) bill, 1883 ...

[Chichester]

[1883]

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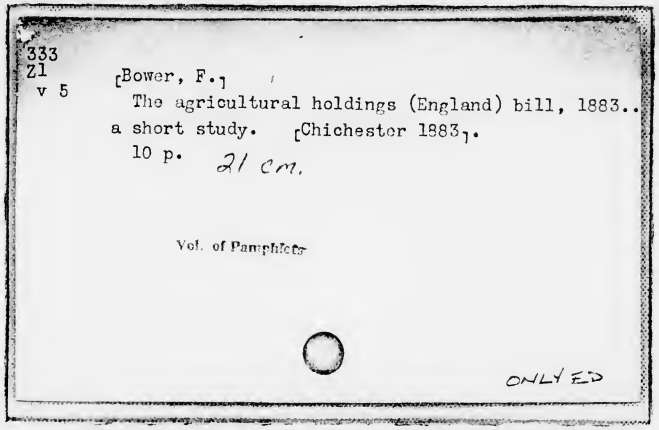




## TECHNICAL MICROFORM DATA

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# THE AGRICULTURAL HOLDINGS

# (ENGLAND) BILL, 1883.

*As Introduced by the Government, May 10th.*

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## A SHORT STUDY

**BY A LANDOWNER.**

F. Bowyer Esq
(Member of the League)

# THE AGRICULTURAL HOLDINGS (ENGLAND) BILL, 1883.

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THE object of this Bill is to enforce compulsory compensation to the farm tenant on quitting his holding, for the value of any unexhausted improvements made by him. It is provided (clause 1) that the compensation shall consist of "such sum as fairly represents the value of the improvement to an incoming tenant." No direction is given to the referees under the Bill as to the method in which this value is to be calculated. According to the authors of the Bill, it is not intended to be, as in the Act of 1875, "such proportion of the sum properly laid out by the tenant as fairly represents the value thereof to an incoming tenant." It would seem, therefore, to follow, that the compensation is intended to be such sum as the incomer would require to expend to effect so much of the improvement as remains of value to him at time of entry. But the construction most in favour, apparently, among the published criticisms upon the Bill, assigns to the

Principle of the Bill.

tenant a capitalized sum, calculated upon the increased annual value of the holding due to the improvement. The last method is not equitable, because such increase of annual value is due to two agencies, of which the outgoing tenant's capital is only one; the other being the fructifying power, or latent fertility of the soil, which is capital supplied by the landlord. Up to the expiration of his tenancy, the tenant is entitled to the benefit of this fructifying power, in right of his payment of rent; but to award him a capitalized sum which includes that benefit for a period subsequent to the expiration of his tenancy, is to secure to him an increment of value which belongs of right to his successor in the holding.

As to drainage.

Clause 4 and part 2 of the schedule deal with the question of drainage. If the tenant demands the execution of drainage works and the landlord complies, all the liability imposed upon the tenant in respect of such outlay is "*a sum of* 5 *per cent.*"; that is, not interest at the rate of 5 per cent., or any other rate per cent. per *annum*; but, in effect, interest at 5 per cent. for one year only; whereas, when the work is done under the provisions of the Improvement of Land Act, the landlord is required to pay interest at the rate of $6\frac{1}{2}$ per cent. per annum, for 21 years. Should the landlord



refuse, no matter for what reason, however good, to undertake the work, the tenant is endowed with sole and supreme discretion to execute it, and, on quitting, to charge the landlord with the unexhausted value. The work of drainage costs a sum of from £7 to £10 per acre, or about one-fourth of the fee simple value per acre, of a large proportion of the agricultural land of the country. The operation demands an experienced judgment; a skilful direction; and a care in execution, which a few tenant-farmers have the capacity to exercise; but in which, many more, thinking they possess it, are wholly deficient. If the landlord desires to undertake the improvement and to charge his estate with the cost, he is bound to obtain the approval of the Inclosure Commissioners to the plan, execution, and cost of the work. Is it not even more reasonable to ask that the tenant should be bound by a like condition? Nor should the tenant's compulsory power to demand so important an outlay, extend to the expiring years of his lease, or to a period subsequent to the date of receiving or giving notice to quit the holding.

As to other improvements not permanent.

The considerations just described apply in varying degrees to the operations of claying, marling, chalking, liming and boning of land

(part 3 of schedule); in regard to which operations, the Bill leaves the tenant wholly unfettered. He is not even required to give notice of his intention to effect them, though at his quitting he is entitled to recover their value from the landlord. The operations are costly in themselves, and they require skill and judgment in the selection and application of the materials employed. No referee can rightly assess the resulting value without examining the land so treated, before, as well as subsequent to the work, and even then he is not free from the liability to serious error. In the Act of 1875, drainage was, therefore, placed among those permanent improvements to which the consent of the landlord was necessary, and the other mentioned operations were properly subject to notice to the landlord, and were restrained, after notice to quit had been given or received.

Compensation for use of manures and feeding stuffs.

Chemical analysis shows that, in a large number of cases, manures and feeding stuffs are sold for agricultural use, which are greatly deficient in fertilizing and feeding properties, as compared with the prices charged. In the laboratory of the Royal Agricultural Society alone, many hundreds of analyses are made annually, with the result of exposing a great amount of ignorance or fraud.



The incoming tenant.

It is absolutely essential to the protection of the incoming tenant that the landlord should be entitled to the means of examining and obtaining samples of the purchased manures or feeding stuffs for which a claim to compensation is to be made. The Bill is entirely destitute of any provision for this purpose. Indeed, the plain truth is, that the Bill, as a whole, is greatly deficient in the reasonable requirement that, where an improvement is to be made and money to be claimed for the making of it, opportunity should be given to the person liable to pay, to ascertain the value of the work at the time of its performance, when alone, in the case of the improvement of land, the real incidence of the work can be ascertained.

Retrospective claims.

Clause 2 allows retrospective claims to be made by the tenant for the third class of improvements, including claying, marling, and liming of land, without any limitation as to the time when the alleged improvement was effected. Such improvements, when effected by the tenant, have frequently been made in consideration of some abatement or forbearance, extension or renewal, on the part of the landlord, of which, in ignorance of the new principle of retrospective legislation,

no available evidence has been preserved. The door is thus opened to claims, genuine or otherwise, as the case may be; but which must certainly defy the power of any arbitrator adequately to examine. It is to be noted, moreover, that while the tenant's claims are thus unlimited as to time, the landlord's counter-claims, for breach of covenant or deterioration, are limited (clause 6) to a period of four years. Nor is the landlord allowed to originate any claim whatever, under the Bill; but only to make a counter-claim in reduction of the tenant's compensation. There is no sufficient reason for these distinctions. Deterioration of condition due to the tenant's neglect can, and not unfrequently does, occur over the whole period of a long lease, and, practically, in spite of everything which a landlord may attempt in order to stop it.

Landlord cannot originate a claim.

There is evidence of an excellent intention (clause 5) by which power is reserved to both parties to a tenancy, to contract themselves out of the Bill (as to part 3 of schedule) by making a special agreement, provided that it secures "fair "and reasonable compensation" to the tenant; but unfortunately no means are afforded for determining, in any given case, what particular agreement would be so construed.

Special agreements.



As a whole, the prevailing defect of the Bill is to ignore the fact that there are just as many incomers to a farm as there are outgoers, and that each has an equal claim to such provisions as will secure equitable interests, with the greatest efficacy and the least possible litigation.

Incomers as numerous as outgoers and equally entitled to protection.

One other point must be noticed, though not as yet within the scope of the Bill, namely, the effort which is being made to procure the insertion of provisions interdicting a rise of rent, except as the result of an arbitration. It should be clearly understood that any such provision, to be effectual, must be accompanied by another, interfering with the landlord's right to recover possession of his property at the determination of the tenancy. Mr. James Howard fully realizes this fact, and frankly advocates the adoption of such interference. Professor Bonamy Price, in a letter published as these notes go to press, proposes that the sitting tenant, upon rise of rent, should be treated, in all respects, as a quitting tenant, except that he shall not quit; and that the value of his improvements shall be liquidated by becoming a set-off against the rise in rent. But the quitting tenant is entitled to compensation, in the great majority of cases, solely because he is, by the fact of quitting,

Legislation for sitting tenant.

leaving manures in the soil which will benefit the next, and, perhaps, following years' crops. Now, if he remains in the farm, he will himself reap the crops so benefited, and cannot be entitled for the same outlay to a second compensation by abatement of rent. Moreover, if the scheme be thought out, it will be found that it is no more workable than the other, without interference with the landlord's right to terminate the tenancy. Such interference is, in other words, fixity of tenure, either absolute or conditional. To such interference, some method of fixing rents must be added; otherwise, the landlord may ask such a rent as becomes only another method of giving notice to quit. Tenant right, with all the evils of limited and divided ownership, naturally follows. The abasement of all those healthy influences which attend the free play of economic laws must be the sequel.

West Dean House, Chichester.

*May* 25, 1883.

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TITLE